

## REMARKS/ARGUMENTS

This Amendment is submitted in response to the Official Action of August 30, 2006. Reconsideration and allowance of claims 1 and 4-9 remaining the application are respectfully requested.

As is explained in applicant's specification, medical personnel have been able to program implantable tissue stimulators using a telemetry probe to send RF data to a stimulator implanted in the body of a patient for many years and that it is also old in the art for an implanted medical device to transmit operational data back to an external programmer via the same telemetry link. A typical prior art implantable tissue stimulator, such as a pacemaker or an automatic defibrillator, includes a microprocessor-based controller and an associated memory for storing a program of instructions, i.e., machine code as well as operating parameters called for by the stored program as that program is being run.

Where applicant's invention deviates from the prior art is that the internal memory of the implanted medical device also is made to store text messages of a predetermined number and length by using an external programmer and telemetry link to enter text messages, along with a text message initiation date and a text message termination date. Those skilled in the art appreciate that text messages are distinguishable from control program messages in that they comprise an arbitrary sequence of alpha/numeric text and not a series of instructions of a predetermined format corresponding to the microprocessor's instruction set. By the present amendment, claim 1 has been modified to recite that the memory of the microprocessor stores both a program of executable instructions and text messages.

The Office Action rejects all of applicant's claims under 35 U.S.C. §102(b) as being anticipated by patent application publication 2002/0065540 (the '540 publication). This publication is quite lengthy, comprising 44 pages of text and 433 individual numbered paragraphs. Applicant's attorney has considered the entire document but has paid particular attention to the numbered paragraphs relied upon by the Examiner for his determination of anticipation. As will be demonstrated more fully below, it is believed

that in finding anticipation, the Examiner has not properly distinguished text messages from the internal control program executed by the microprocessors in the implanted pump and external device.

Applicant would agree that the '540 publication discloses a system having an external programmer capable of transmitting and receiving data signals and for visually displaying information, via LCD display 36, to a person. However, it is contended that there is no teaching in the '540 publication of an implantable medical device having a microprocessor-based controller with a memory for storing both a program of executable instructions and text messages. Paragraph 139 of the '540 publication which the Examiner indicates support such a contention only indicates that the memory stores program code and not an arbitrary sequence of alpha/numeric text exemplified by the message shown in Figure 5 of applicant's drawings.

The Office Action also asserts that the '540 publication "discloses transmitting at least one text message from the external programmer to the implantable medical device over the telemetry link along with a text message initiation and termination date and a priority." Paragraphs 84, 174, 274 and 316 are said to support this contention. Considering those paragraphs in order, paragraph 84 states that the communication device (CD) telemetry system "sends messages to or receives messages from the MD (medical device) telemetry system but it is clear that such "messages" constitute control data and not text messages. This is exemplified by the fact that the remainder of paragraph 84 discusses "watchdog" timing features typically embedded in software routines to insure that the medical device and the communication device do not lose synchronization with one another. Typically, an interrupt would be generated if a receiving device did not respond with an acknowledge to the sending device within a predetermined time interval. No text messaging from the MD to the CD can be inferred from this paragraph.

Paragraph 174 of the '540 publication also does not imply or suggest text messaging between the external subsystem 32 and the implantable unit 2. The mentioned "personal event log" is stored in the "external communication device" and not in the implanted device.

Paragraph 274 of the '540 publication is obviously all concerned with internal control and not to the exchange of text messages.

Likewise, paragraph 316 of the '540 publication states that many different types of messages and responses thereto can be written into the programs that control the implantable device and external communication device ... ". The messages discussed are all control messages in nature and are not an arbitrary sequence of alpha/numeric text authored by a human operator. Instead, they are internally generated to provide operating status information as the processor's program is executed.

The Office Action cites paragraph 110 of the '540 publication as supporting a proposition that the publication discloses "storing of text messages". There is nothing in paragraph 110 that can serve as a basis for the asserted proposition.

The Office Action further asserts that paragraph 405 of the '540 publication discloses periodically interrogating the memory with the external programmer and reading out the at least one text message over the telemetry link to the external programmer for visual display when the time of said interrogation falls between the initiation date and the termination date. This is not true. There is nothing in paragraph 405 that supports the contention. Paragraph 405 merely discusses a typical command response system, often referred to in the prior art as "Request/Acknowledge". Furthermore, the IP (interprocessor) message is something sent between the main processor 202 and the monitor processor 302 (Figure 4), both of which form part of the implanted medical device. As such, there is nothing in paragraph 405 that would involve interrogating a memory from an external programmer and reading out a text message.

For the reasons advanced, then, the '540 publication does not anticipate independent claim 1 as presently amended.

Concerning the rejection of dependent claims 4-9, in that they depend from allowable claim 1; they too should be allowed. Moreover, the limitations added by independent claims 4-9 are missing from the cited reference.

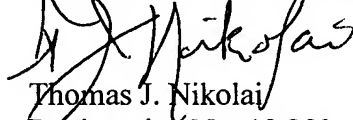
The Office Action asserts that paragraph 174 and 316 disclose the use of a parity flag in combination with text messages and that such parity flag can vary the frequency and timing of text messages.

Paragraph 174 of the cited reference has already been considered and there is no mention whatever of "priority flag" or anything that would be equivalent to it in the cited paragraph. Likewise, paragraph 316 has been carefully considered and there is nothing there that would teach one skilled in the art that interpretation of a parity flag appended to a text message when set out and read out from the memory of the implanted medical device will cause the text message to be repeated at a different rate than when the parity flag is not set. Again, paragraph 316 is concerned with control messages developed and utilized by the electronic circuitry of the implanted device and not to text messages initially entered into the memory of the implanted device along with the usual program of executable instructions whereby an external programmer can later interrogate the memory and read out that same text message for display to a human operator.

By way of summary, then, the remarks presented above address each of the assertions set out in the Office Action and establish that the '540 publication does not disclose the combination of method steps set out in independent claim 1 and, hence, it does not anticipate. Dependent claims 4-9 are also believed to be free of the art and should now be allowed. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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### CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment filed in response to the Official Action of August 30, 2006, in application Serial No. 10/713,813, filed on November 14, 2003, of Robert J. Sweeney entitled "Implantable Medical Device with Text Messaging Capability" is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, postage prepaid, on November 16, 2006.

Date of Signature: Nov. 16, 2006.

  
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